

117291

**DECISION**



20552 Boyle

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-205593.2

DATE: January 13, 1982

MATTER OF: Environmental Laboratory of Fayetteville,  
Inc.--Reconsideration

**DIGEST:**

Prior decision is affirmed because the protester has not shown any errors of law or fact in the decision's dismissal of its protest against the contracting officer's affirmative determination of the low bidder's responsibility.

Environmental Laboratory of Fayetteville, Inc. (Environmental), requests reconsideration of our decision in the matter of Environmental Laboratory of Fayetteville, Inc., B-205593, December 7, 1981, 81-2 CPD \_\_\_\_\_. After considering the protester's contention, we affirm the prior decision.

The prior decision dismissed Environmental's protest against the contracting officer's determination that Law and Company, Inc. (Law), had the capability to perform as required under invitation for bids (IFB) No. DAKF40-81-B-0207 issued by the Army for water and wastewater monitoring and analyzing services at Fort Bragg, North Carolina. The decision states that our Office does not review protests of affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied and neither exception is applicable here.

On reconsideration, Environmental contends that, (1) in responding to Environmental's protest to the contracting officer, the contracting officer changed the time of performance requirements; (2) citing B-162970, March 5, 1968, the contracting officer required no evidence or proof that Law could perform as required; (3) Law can be given only until the date performance commences to obtain facilities and certification; and

(4) no affirmative determination of responsibility has been made because no evidence was considered and no legal opinion was rendered.

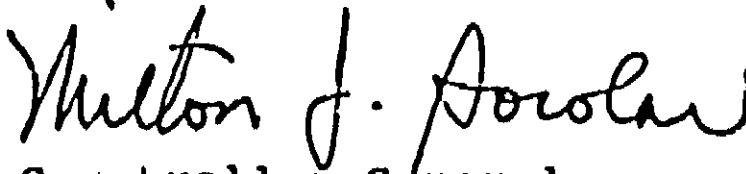
First, there is no merit to Environmental's contention that the contracting officer changed the time of performance requirements. Further, the contracting officer states that Law can perform the work in the time required.

Second, our decision B-162970, March 5, 1968, is inapplicable because it concerned a negative determination of responsibility (a finding by the contracting officer that the low bidder is nonresponsible) and not an affirmative determination of responsibility like the one involved here. Moreover, we still review negative determinations of responsibility (except where small businesses are concerned), whereas we no longer review affirmative determinations of responsibility except in limited circumstances not present here (see BFH & Associates, Inc., B-198844, January 26, 1981, 81-1 CPD 43).

Third, the IFB did not bar Law from obtaining additional facilities or certifications after award. Law is obligated to perform as required by the IFB. As noted by the contracting officer, if Law needs a new facility to comply with its contract, Law may obtain one after award.

Fourth, we have held that the contracting officer's signing of the contract constitutes an affirmative determination of responsibility, which we will not review absent a showing of fraud on the part of procuring officials or an allegation of failure to apply definitive responsibility criteria, neither of which is present here. Global Crane Institute, B-204555, September 18, 1981, 81-2 CPD 226. Thus, there was an affirmative determination of Law's responsibility.

Accordingly, since Environmental has not shown any errors of law or fact and has not presented any new evidence warranting modification or reversal of the prior decision, the December 7, 1981, decision is affirmed.

for   
Comptroller General  
of the United States